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CHICAGO, ILLINOIS

ORIGINAL  
FILE

December 29, 1992

Ms. Donna R. Searcy, Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Stop Code:1170  
Room No. 222  
Washington, D.C. 20554

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DEC 29 1992

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

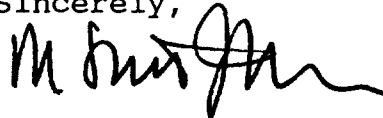
Re: MM Docket No. 92-227  
RM 8070 and 8072

Dear Ms. Searcy:

On behalf of Pearce Broadcasting Partnership, permittee of Station WUAF(FM) at Valley, Alabama, there is transmitted herewith an original and (4) copies of its Reply Comments with regard to the above-referenced Docket No. 92-227.

Should any questions arise with respect to this matter, please contact the undersigned.

Sincerely,



M. Scott Johnson

MSJ/df  
Enclosure

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BEFORE THE  
**Federal Communications Commission**

WASHINGTON, D.C. 20554

In the Matter of	)	MM Docket No. 92-227
Amendment of Section 73.202(b)	)	
Table of Allotments,	)	RM-8070
FM Broadcast Stations	)	RM-8072
	)	
(Eatonton, Sparta, Fayetteville	)	
Greenville, Griffin, Hogansville	)	
Sparta, and Thomaston Georgia;	)	
and Ashland and Valley, Alabama)	)	
	)	

TO: Chief, Allocations Branch

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**REPLY COMMENTS OF PEARCE BROADCASTING PARTNERSHIP**

Pearce Broadcasting Partnership ("Pearce"), permittee of Station WUAF(FM) at Valley, Alabama, by its attorneys, hereby submits its reply comments with respect to the counterproposal filed on December 11, 1992, by T. Wood and Associates in the above-referenced proceeding.

T. Wood and Associates ("Wood"), licensee of Station WEIZ, which currently is allotted Channel 248A, has requested that WEIZ be assigned Channel 251C3 by modifying the channel of operation for Station WUAF at Valley, Alabama, from Channel 251A to Channel 237A. Pearce has reviewed this proposal, and it appears that the proposed modification can be made in full accordance with the Commission's spacing rules and policies.

Pursuant to a written agreement with Wood, Pearce has consented to the proposed modification of channel for WUAF from Channel 251A to Channel 237A. In this respect, it should also be noted that under the terms of the Agreement, Wood has agreed to

reimburse Pearce's expenses incurred in connection with the modification of WUAF's Channel and the change to operation on Channel 237A.<sup>1/</sup> A copy of the Agreement is attached hereto. Accordingly, Pearce requests that any Report and Order or other action of the Commission adopting the proposed change provide for such reimbursement to Pearce.

For the foregoing reasons, Pearce is filing these Reply Comments to confirm that pursuant to the terms of the agreement with Wood, Pearce has provided its consent to the Wood counterproposal which proposes that WUAF's channel be modified from Channel 251A to Channel 237A.

Respectfully submitted,

PEARCE BROADCASTING PARTNERSHIP

By:   
M. Scott Johnson

By:   
Catherine M. Withers

Its Attorneys

GARDNER, CARTON & DOUGLAS  
1301 K Street, N.W., 900-East  
Washington, D.C. 20005  
(202) 408-7100

Dated: December 29, 1992

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<sup>1/</sup> As the Agreement provides, Wood has also consented to Pearce's operation of WUAF with 6 kW facilities on Channel 251A. Such 6 kW operation will also be possible on Channel 237A.

## **AGREEMENT**

**THIS AGREEMENT**, entered into between Pearce Broadcasting Partnership ("Pearce"), and T. Wood and Associates, Inc. ("Wood").

**WHEREAS**, Pearce is the permittee of Station WUAF, Valley, Alabama and presently is authorized to operate on Channel 251A at 32° 55' 12" North Latitude (N), 85° 13' 04" West Longitude (W); and

**WHEREAS**, Wood is the permittee of Station WEIZ, Hogansville, Georgia, and presently is authorized to operate on Channel 248A, at 33° 03' 54" North Latitude (N), 84° 57' 23" West Longitude (W); and

**WHEREAS**, under the former rules established by the Federal Communications Commission ("FCC"), Class A FM radio stations were limited to an effective radiated power (ERP) of 3 kW, and Class A FM radio stations operating on a third adjacent frequency from each other are required to maintain a separation of 27 kilometers; and

**WHEREAS**, by Second Report and Order released on August 18, 1989 (FCC 89-232), the FCC increased the maximum permitted effective radiated power permitted for Class A FM radio stations to 6 kW and now requires third adjacent frequency Class A FM radio stations to be separated by 31 kilometers in order for them to be fully-spaced under its minimum separation rules (§ 73.207); and

**WHEREAS**, the FCC will permit a short-spaced class A FM broadcast station nevertheless to increase its transmitter power to an effective radiated power (ERP) of 6 kW upon receiving FCC consent if all stations to which a station is short-spaced consent to the power increase; and

**WHEREAS,** Pearce desires expeditiously to commence non-directional operation on Channel 251A with 6 kW transmitter power (ERP) and maximum antenna height of 100 meters and intends to file an application with the FCC to specify a transmitter site located at 32° 55' 34" North Latitude (N), 85° 13' 42" West Longitude (W), which site is located 29.72 kilometers from Station WEIZ's authorized transmitter site, and is therefore fully-spaced under § 73.213(c)(1), but would be short-spaced to WEIZ by 1.28 kilometers under the FCC rules § 73.207; and

**WHEREAS,** consent from Wood by Pearce therefore is required in order for Pearce to specify a nondirectional operation with a transmitter power of 6 kW and an antenna height of 100 meters (HAAT) at that transmitter site; and

**WHEREAS,** Wood has submitted a counterproposal in MM Docket No. 92-227 before the FCC proposing to change Station WUAF's authorized channel of operation to Channel 237A; and

**WHEREAS,** operation on Channel 237A by Pearce will permit Pearce to operate Station WUAF at a transmitter site located at 32° 55' 34" North Latitude (N), 85° 13' 42" West Longitude (W), with a full 6 kW transmitter power (ERP), non-directional, and with an antenna height of 100 meters (HAAT) in full accordance with the FCC's spacing Rules; and

**WHEREAS,** consent by Pearce to the proposed operation by Station WUAF on Channel 237A is desired by Wood in order to expedite the processing of Wood's counterproposal by the FCC.

**NOW, THEREFORE,** in consideration of the mutual covenants of the parties, the sufficiency of which hereby is acknowledged, the parties agree as follows:

1. Wood hereby provides its consent to Pearce's proposed short-spacing of Station WEIZ and any resulting interference by Station WUAF. More specifically, Wood agrees to accept whatever harmful interference, if any, which may result by virtue of non-directional operation of Station WUAF: (a) with transmitter site coordinates of 32° 55' 34" North Latitude (N), 85° 13' 42" West Longitude (W) with transmitter power (ERP) of 6 kW, and 100 meters antenna height above average terrain (HAAT), or (b) with a transmitter site at any other location (and with 6 kW ERP and 100 meters HAAT) that does not increase the short-spacing to any greater extent than the coordinates in (a) or is less short-spaced to Station WEIZ at its currently approved transmitter location. Moreover, Wood acknowledges that by virtue of the fact that Wood also does not intend simultaneously itself to file an application to operate with 6 kW from its current transmitter site on its current channel of operation, it may be precluded from receiving authorization from the FCC to operate Station WEIZ at 6 kW ERP and 100 meters antenna height (HAAT) (or equivalent) in the future. Further, Wood specifically agrees that WUAF may in the future modify its antenna, transmitter power, or other aspects of the WUAF facility in any respect and/or change transmitter location to any location it desires so long as it does not propose an increase in the short-spacing to WEIZ at its present location in excess of that

which would result from non-directional operation of WUAF at the coordinates referenced above in this paragraph with a transmitter power (ERP) of 6 kW and antenna height of 100 meters (HAAT) (or equivalent).

2. Under the terms and conditions of this Agreement, Pearce agrees to the change of channel for WUAF from channel 251A to 237A and will file with the FCC reply comments which consent to the proposal to change Station WUAF's channel of authorization from Channel 251A to Channel 237A in a manner consistent with the terms of this Agreement.

3. In consideration of Pearce's consent to the channel change to Channel 237A, Wood agrees to provide to Pearce reimbursement for actual expenses incurred by Pearce for the change in channels from Channel 251A to Channel 237A, in an amount up to \$15,000, for the following: (a) in the event Pearce purchases an antenna for use on Channel 251A, up to \$7,000 for the cost of purchasing such antenna for Channel 251A and replacing the antenna with a comparable Channel 237 3-bay antenna of Pearce's choice; (b) up to \$1,000 for fees for a tower crew to mount Pearce's Channel 237 antenna; (c) up to \$2,000 for the cost of retuning its transmitter to the new frequency (Channel 237) of operation; (d) up to \$500 for recalibration of Station WUAF's modulation monitor; (e) actual legal and engineering costs up to \$2,500 for costs as may be incurred for filing an FCC Form 301 and/or Form 302 for issuance of a new construction permit and/or license for the new frequency; and (f) up to \$2,000 for additional expenses incidental to the channel

change (i.e., advertising, stationery, etc.). Pearce will provide statements, bills or invoices to document the expenses to be reimbursed. No later than twenty (20) days from receipt of such documentation, Wood will pay Pearce the reimbursement. Moreover, this Agreement shall not preclude Pearce from receiving reimbursement from other persons for expenses not reimbursed by Wood pursuant to this Agreement.

4. The mutual covenants contained herein for Wood to support Pearce's short-spaced application or a subsequent application and/or operation of WUAF, and for Pearce to consent to Wood's counterproposal shall continue to be binding upon the parties even in the event: (a) the FCC denies Pearce's application to operate with 6 kW transmitter power (ERP) and antenna height of 100 meters (HAAT) from a site at 32° 55' 34" North Latitude (N), 85° 13' 42" West Longitude (W); (b) if Pearce chooses another location consistent with the requirements of this Agreement set forth in ¶ 1 above; (c) if Pearce delays filing its 6 kW application indefinitely or decides to remain at its current transmitter site; or (d) if Wood's counterproposal to substitute Channel 237A for Channel 251A at Valley, Alabama is denied by the FCC. Provided, however, that in the event the FCC does not grant Wood's counterproposal to substitute Channel 237A for Channel 251A at Valley, Alabama, Wood shall have no further obligation to reimburse Pearce for any of its expenses as would have been incurred by its change of channels of operation.



5. If any term or provision of this Agreement or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remaining terms and provisions of this Agreement, or the application of such terms or provisions to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the extent permitted by law.

6. This Agreement contains the entire understanding of the parties with respect to the subject matter hereof, and there are no representations, warranties, or undertakings other than those expressly set forth herein. This Agreement may not be amended, modified, terminated or revoked by either party except by mutual consent evidenced in writing, signed by the parties hereto.

7. This Agreement shall be construed in accordance with the laws and decisions of the State of Alabama applicable to contracts made and executed therein.

8. This Agreement may be executed in counterparts, and shall be effective as of the last date executed.

9. This Agreement is binding upon the parties, their heirs and successors, and shall be enforceable by specific performance or whatever other remedy as may be available at law in Alabama.

IN WITNESS WHEREOF, the parties have executed this Agreement  
as of the dates specified below.

Date: 12/28/91

PEARCE BROADCASTING PARTNERSHIP

By: 

Date: 12/28/92

T. WOOD AND ASSOCIATES, INC.

By: 

President

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CERTIFICATE OF SERVICE

I, Donna B. Fleming, a secretary in the law firm of Gardner, Carton & Douglas, certify that I have this 29th day of December, 1992, caused to be sent by first-class U.S. mail, postage-prepaid, a copy of the foregoing to the following:

\* Michael C. Ruger  
Chief of Allocations  
Federal Communications Commission  
1919 M Street, N.W.  
Room 404  
Washington, D.C. 20554

Robert S. Stone, Esquire  
McCambell & Young  
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Dan J. Alpert, Esquire  
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(Counsel for Good Medicine, Inc.,  
Design Media, Inc. and  
T. Wood & Associates)

Robert Perry  
Station WASZ  
Perry Communications, Inc.  
P.O. Box 395  
Ashland, Alabama 36251

  
Donna B. Fleming

\* Hand Delivered

[44536]